IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 672 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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KALAL KANAIYALAL MAGANLAL

Versus

RANA PUNAMCHAND ADITRAM

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Appearance:

MR UDAYAN P VYAS for Petitioner

MR SANJAY M DOSHI for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/01/99

ORAL JUDGEMENT

List has been revised twice. None appears for the respondents. As such Learned Counsel for the revisionist has been heard. The brief facts giving rise to this revision under Section 29(2) of the Bombay Rent Control Act, 1947 (for short "Rent Act") are as under:-

1. The revisionist claiming to be owner in possession of open land filed a suit for eviction of the respondent from a portion of the land in the tenancy of

the respondent on monthly rent of Rs.35/- with allegation that the respondent failed to pay the arrears of rent exceeding six months after service of notice of demand.

2. The respondent contested the suit on variety of grounds challenging the ownership of the revisionist in the disputed land. He further pleaded that there was dispute amongst two persons and as such in face of this dispute the respondent could not be sure to whom the rent should be paid and as such the rent could not paid. Alternative inconsistent pleas was also taken by the respondent that the rent was paid.

3. The Trial Court dismissed the suit with the finding that the revisionist is not the landlord vis-a-vis the respondent and as such the respondent is not liable to pay any rent to the revisionist.

4. The revisionist preferred an appeal. The Appellate Court found that the relationship of landlord and tenant between the parties was established. Reference was made to definition of landlord as contained in Section 5(3) of the Rent Act. The Appellate Court further found that the revisionist is not the owner of the property. It found that the revisionist was holding the land on lease and the lease was not renewed after its expiry. However in face of long and continuous possession of plaintiff over the demised land it was found by the Appellate Court that the plaintiff revisionist was in possession and was landlord of the respondent. On the point of arrears of rent the Appellate Court took into consideration inconsistent pleas of the respondent. It was observed by the Lower Appellate Court that the rent was not paid by the respondent to the revisionist. However in view of alleged dispute regarding landlord between two persons the tenant respondent could not pay the rent. Since the tenant respondent made an offer to pay the rent to the person to whom the Court directs, the Lower Appellate Court found that the tenant was ready and willing to pay the rent and also in view of the admission of the learned Counsel for the revisionist that he has not prayed for possession and recovery of possession, hence the suit for possession was dismissed. The Trial Court fixed the rate of rent at Rs.15/- per month and as such the Appellate Court partly allowed the appeal and granted decree for arrears of rent at the rate of Rs.15/- p.m. and also granted decree for pendelite and future mesne profits. It is against this order of the Lower Appellate Court that the instant revision has been filed.

5. The Learned Counsel for the revisionist has rightly argued that the relationship of landlord and tenant between the parties is established. The established position at present is that in the strict sense the plaintiff revisionist is not the owner of the property. It was let out to him. The lease expired and thereafter it was not renewed. Thus he cannot be said to be the owner of the property. However concept of ownership is not relevant and material. It has to be determined whether the plaintiff revisionist is the landlord of the defendant respondent or not. For this definition of landlord as contained in Section 5 (3) of the Bombay Rent Act has to be referred.

6. It defines "Landlord" to mean any person who is for the time being, receiving, or entitled to receive, rent in respect of any promises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant, and includes any person not landlord being a tenant who from time to time derives title under a landlord and further includes in respect of his sub-tenant, a tenant who has sublet any premises and also includes in respect of a licensee deemed to be a tenant by section 15 A, the licensor who has given such licence."

7. For the purpose of this revision it is clear that the position of the revisionist is that of the tenant in chief and that of the respondent is sub-tenant of the revisionist. In view of the above definition sub-tenant will be included under this definition to be a tenant of the landlord i.e. tenant in chief and as such the finding of the Lower Appellate Court that the revisionist is landlord of the respondent does not suffer from any illegality or infirmity. It is in accordance with the evidence on record and true and correct construction of Section 5(3) of the Rent Act. So far the question of payment of rent is concerned, the findings recorded by the 2 courts below are nonconcurrent findings. The Trial Court observed that since the relationship of landlord and tenant between the parties is not established the respondent is not obliged to pay any rent to the revisionist. This finding was not accepted by the Lower Appellate Court. The Lower Appellate Court however found that the plea of the respondent that the rent was paid is without any evidence and as such it was not accepted. This finding does not require any interference. If this finding is accepted then the admitted position is that

the respondent did not pay the rent exceeding six months within a month of service of notice of demand. The Lower Appellate Court committed manifest error of law on two counts. Firstly, it rejected the decree for possession on the ground that the Counsel for the plaintiff revisionist fairly admitted before the Lower Appellate Court that he has not prayed for possession and recovery of possession. The statement of the Learned Counsel for the plaintiff revisionist was not recorded by the Lower Appellate Court. The statement and admission mentioned in Para 8 of the judgement of the Lower Appellate Court is confusing and it does not indicate that it was actually admitted by the learned Counsel for the revisionist that he has not prayed for possession and recovery of possession. For this plaint has to be scrutinised so also the judgement of the Trial Court and these two clearly indicate that the relief of possession was sought by the plaintiff revisionist. It was never given up nor any statement was made by the learned Counsel for the revisionist in the Lower Appellate Court that the relief of possession was not being pressed. Secondly on the basis of the confused statement referred by the Lower Appellate Court decree for possession was wrongly refused.

8. Another illegality which is manifest on record is that the Lower Appellate Court observed that the tenant was ready and willing to pay the rent to the person to whom the court directs to pay. However, it was never observed anywhere by the Lower Appellate Court that the dispute raised by the respondent as to whom the rent is to be paid was a genuine and bonafide dispute. An offer by the tenant or sub-tenant at late stage in the appeal for payment of rent cannot be construed as readiness and willingness on the part of the rule tenant or tenant in chief to pay the rent. Thus the decree of eviction on these two grounds was wrongly refused by the two Courts below. The result therefore is that the revision has to be allowed and is hereby allowed with costs throughout. The suit of the plaintiff revisionist for recovery of possession of the demised land is hereby decreed. The decree for arrears of rent amounting to Rs.1585/- passed by the Lower Court w.e.f. 1.5.87 to 31.12.90 is hereby confirmed. The plaintiff revisionist shall get pendelite and future mesne profits at the rate of Rs.15/- p.m. w.e.f. 1.1.91 on payment of additional Court fees in the execution side.

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